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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,209	07/25/2006	D. Ion Degeratu	P02276	7152
40401 7590 01/26/2009 Hershkovitz & Associates, LLC 2845 Duke Street Alexandria, VA 22314				
EXAMINER LIPTIZ, JEFFREY BRIAN				
ART UNIT 4128		PAPER NUMBER		
NOTIFICATION DATE 01/26/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@hershkovitz.net  
patent@hershkovitz.net

### Office Action Summary

**Application No.**

10/587,209

**Applicant(s)**

DEGERATU ET AL.

**Examiner**

JEFFREY LIPITZ

**Art Unit**

4128

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Foreign Documents Enclosed
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because it is not understood why Figure's 2 and 3 are provided. The drawings are also objected to because the tables provided in the drawing section are not labeled as figures. Please remove superfluous figures and provide figure numbers on all drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The disclosure is objected to because of the following informalities: The list of figures provided on page nine includes a "Figure 4" that is not included in the application. Please remove the reference to Figure 4. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Przybilla (WO 9213597).

Regarding claim 4, Przybilla teaches a light source **6**, an optical filter **2**, a case **1**, a support (unlabeled but designated as the vertical line connecting the light source **6** and the foot plate **5**) set on a foot plate **5** that bears the light source **6** ventilated by a fan **10** set inside the case **1**, a concave mirror **7** set on an axial handlebar **8** connected to the wall of the case **a**, a rotary shutter disc **14** having two orifices **c** is set on the opposite wall with the optical filter **2**, equipped with a slit regulating device **15**, wherein the processed light flux is made of rays reflected by the concave mirror **7** and of direct rays reflected by the source of light **6**; and wherein the light flux passes through the orifices **c** of the shutter disc **14** and straighten to the objective (unlabeled but section protruding on the upper left containing the optical filter **2**).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Przybilla (as discussed supra) in view of Anderson et al. (US 2003/0036751).

Regarding claim 5, Przybilla also teaches that the rotating speed of the shutter disc **14** is run by an engine **15** that the shutter ventilated by the fan **10**, and assisted by a modulator of the light flux **12/13**. The Przybilla reference DIFFERS in that it does not disclose that the modulator or light flux is *digital* as claimed. Attention, however, is directed to Anderson et al. which discloses a digital modulator of light flux (Paragraph [0206]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Przybilla to incorporate the teachings of Anderson et al. to make the modulator of light flux digital. Doing so would increase precision of the light flux control.

Regarding claims 6 and 7, the Przybilla reference DIFFERS in that it does not disclose that a computer controls the entire apparatus' handling and coordinating as claimed. Attention, however, is directed to Anderson et al. which discloses a computer control system (Paragraph [0076]). Therefore, it would have been obvious to have modified Przybilla to incorporate the teachings of Anderson et al. to use a computer to

control the coordination and handling of the apparatus. Doing so would enable data to be stored and enable the device to be used in conjunction with other medical devices.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY LIPITZ whose telephone number is (571)270-5612. The examiner can normally be reached on Monday to Friday from 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on 571-272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/JEFFREY LIPITZ/

Examiner, Art Unit 4128

/Khoa D. Huynh/

Supervisory Patent Examiner, Art Unit 4128